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IN THE
COURT OF APPEALS OF INDIANA

AMSTED INDUSTRIES, INC. d/b/a AMERICAN STEEL FOUNDRIES, Appellant-Defendant/Third-Party Plaintiff,	)	
vs.	)	No. 45A03-0712-CV-597
JESS A. KAUFMAN, Appellee-Plaintiff, and CRANE AMERICA SERVICES, Appellee-Third-Party Defendant.	)	

APPEAL FROM THE LAKE CIRCUIT COURT
The Honorable Lorenzo Arredondo, Judge
Cause No. 45C01-0201-CT-10

May 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Amsted Industries, Inc., d/b/a American Steel Foundries ("Amsted") appeals the trial court's grant of summary judgment to Appellee-Third-Party-Defendant Crane America Services ("Crane America") and denial of its motion for partial summary judgment. We reverse and remand for further proceedings.

Facts and Procedural History

In 1999, Amsted entered into an agreement for Crane America to provide services of inspecting and repairing the cranes at Amsted's American Steel Foundries facility. As a part of the agreement, Crane America, through its representatives, signed Standard Liability Forms ("Liability Forms"). The Liability Forms provide in relevant part:

> The undersigned [Crane America] hereby agrees to save harmless, defend and indemnify AMSTED Industries, Incorporated, ("AMSTED") . . . from and against any and all liability, claim damages, costs, losses and expenses (including defense costs) in any way arising out of: . . . injury to . . . any person . . . which arises out of or in connection with the presence of the undersigned or the undersigned's . . . agents or employees on or about the property of AMSTED's American Steel Foundries' division . . . or the performance of any work pursuant to any purchase order issued by American Steel Foundries or other contract between American Steel Foundries and the undersigned, unless such injury . . . is caused by the sole negligence of AMSTED. . . .

Appellant's Appendix at 117-18.

On December 14, 2000, Jess Kaufman, an employee of Crane America, filed a complaint against Amsted. Kaufman alleged that on April 10, 1999, he was in the employ of Crane America and was inspecting and making repairs to a crane on the American Steel Foundries facility when a limit plate fell from a crane and struck him. Kaufman asserted that his injuries were caused by Amsted's negligence.

On April 5, 2002, Amsted filed a third-party complaint against Crane America for indemnification, contending that the Liability Forms contractually bound Crane America to indemnify Amsted for the lawsuit filed by Kaufman. On March 1, 2007, Crane America filed a motion for summary judgment. Crane America argued that the indemnification provision in the Liability Forms was unenforceable for failing to state with clarity that Crane America agreed to indemnify Amsted when a claim is caused in part by Amsted's own negligence. Amsted filed its response to Crane's motion as well as its own motion for partial summary judgment. In its motion, Amsted requested that trial court determine that the indemnification provision in the Liability Forms is valid and enforceable. Both parties filed further responses.

After a hearing, the trial court entered an order granting Crane America's motion for summary judgment and denying Amsted's motion. The trial court noted in its order that "[t]he language in the Standard Liability form at issue does not expressly state, in clear and unequivocal terms, as required under applicable Indiana case law, that Third Party Defendant, Crane America Services agreed to indemnify Third Party Plaintiff, Amsted Industries, Inc. for Amsted Industries, Inc.'s own negligence." App. at 8. On September 5, 2007, Crane America moved the trial court to make the order final and appealable, which was granted.

Amsted now appeals.

Discussion and Decision

I. Standard of Review

When reviewing a grant of summary judgment, our standard of review is the same as

that of the trial court and will not change when there are cross-motions for summary judgment. Liberty Mut. Fire Ins. Co. v. Beatty, 870 N.E.2d 546, 549 (Ind. Ct. App. 2007). Pursuant to Rule 56(C) of the Indiana Rules of Trial Procedure, summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. We consider only those facts that the parties designated to the trial court. Breining v. Harkness, 872 N.E.2d 155, 158 (Ind. Ct. App. 2007), trans. denied. We must also accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. Id. When there are no disputed facts with regard to the motion for summary judgment and the question presented is a pure question of law, we review the matter *de novo*. State Farm Mut. Auto. Ins. Co. v. Cox, 873 N.E.2d 124, 127 (Ind. Ct. App. 2007).

II. Analysis

Here, the dispute revolves around the interpretation of the indemnification provision in the contract for services between Amsted and Crane America. The construction of the terms of a written contract is a pure question of law. Harrison v. Thomas, 761 N.E.2d 816, 818 (Ind. 2002). In interpreting a contract, we attempt to determine the intent of the parties at the time the contract was made by examining the language used to express their rights and duties. GKN Co. v. Starnes Trucking, Inc., 798 N.E.2d 548, 552 (Ind. Ct. App. 2003). Unless it is clear from the contract and the subject matter thereof that some other meaning was intended, words used in a contract are to be given their clear and ordinary meaning. Id. Words, phrases, sentences, paragraphs, and sections of a contract cannot be read alone. Id. Rather, the entire contract must be read together and given meaning, if possible. Id.

Absent prohibitive legislation, no public policy prevents parties from contracting as they desire. Hagerman Const. Corp. v. Long Elec. Co., 741 N.E.2d 390, 392 (Ind. Ct. App. 2000), trans. denied. Thus, a party may contract to indemnify another for the other's own negligence, but only if the party knowingly and willingly agrees to such indemnification. Id. We disfavor indemnity clauses because to obligate one party to pay for the negligence of another is a harsh burden that a party would not accept lightly. Id. Such provisions are strictly construed and will not be held to provide indemnification unless it is so stated in clear and unequivocal terms. Id.

In determining whether a party has knowingly and willingly accepted this burden, we follow a two-step analysis. GKN Co., 798 N.E.2d at 552. First, the indemnification clause must expressly state in clear and unequivocal terms that negligence is an area of application where the indemnitor (here, Crane America) has agreed to indemnify the indemnitee (in this case, Amsted). Id. The second step determines to whom the indemnification clause applies. Id. Again, in clear and unequivocal terms, the clause must state that it applies to indemnification of the indemnitee by the indemnitor for the indemnitee's own negligence. Id.

The parties do not dispute that the indemnification clause expressly states in clear and unequivocal terms that it applies to negligence claims. However, the parties disagree as to whether the provision states in clear and unequivocal terms that Crane America must indemnify Amsted for claims caused by Amsted's own negligence.

Crane America argues that the language of the provision does not expressly state that it would be responsible for indemnifying Amsted for injuries or damages where Amsted was

partly at fault. Crane America contends that this conclusion can only be reached by implication, which is not adequate to make the provision enforceable. Amsted argues that the final clause of the provision, read with the preceding clauses, clearly and unequivocally states that Crane America agreed to indemnify Amsted against any and all injuries or claims except those based on the sole negligence of Amsted.

In Moore Heating & Plumbing, Inc. v. Huber, Hunt & Nichols, a panel of this Court addressed the same arguments based on a similar indemnification provision. Moore Heating & Plumbing, Inc. v. Huber, Hunt & Nichols, 583 N.E.2d 142 (Ind. Ct. App. 1991). The indemnification provision read in pertinent part:

> [Moore] agrees to indemnify [Huber] against and hold [Huber] harmless from any and all liability . . . from any claim or cause of action of any nature arising while on or near the Job Site . . . including claims relating to its . . . employees, or by reason of any claim or dispute of any person or entity for damages from any cause directly or indirectly relating to any action or failure to act by [Moore], its representatives, employees, subcontractors or suppliers, and whether or not it is alleged that [Huber] in any way contributed to the alleged wrongdoing or is liable due to a nondelegable duty. It is the intent of the parties that [Moore] shall indemnify [Huber] under [this indemnification clause and the insurance clause] to the fullest extent permitted by law, however, [Moore] may not be obligated to indemnify [Huber] for the sole negligence or willful misconduct where such indemnification is contrary to law, but otherwise it is the intent of the parties that [Moore] shall indemnify [Huber] to the fullest extent permitted by law for such liability. . . .

Id. at 144. In analyzing whether the indemnification provision fulfilled the second prong of the test for whether a party knowingly and willingly agreed to indemnify the other party for the other party's negligence, the Court addressed Moore's argument, similar to that posed here by Crane America, that the provision did not have the requisite specificity:

> Moore claims the language contained in the indemnification clause is

> insufficient because it does not contain a specific, explicit reference that Moore would indemnify Huber for damages resulting from the negligence of Huber. The word "negligence" is not used except in a disclaimer of what would not be indemnified. The gist of Moore's contention is that the portion of the clause which precedes the specific reference to "negligence" is too general to qualify as a specific reference to indemnification for Huber's own negligence and that the subsequent reference to what would not be indemnified requires us to infer that the general reference allows Huber's own negligence to be indemnified. This would make the provision for Huber's own negligence implicit, not explicit.

Id. at 146. After reviewing principles of contract interpretation, including the principle that words, phrases, sentences, paragraphs, and sections of a contract cannot be read alone, the Moore Court explained:

> We find no ambiguity here. Moore agreed to indemnify Huber against any and all liability from any claim or cause of action of any nature arising while on or near the job site, including claims relating to its employees, whether or not it was alleged that Huber in any way contributed to the alleged wrongdoing or is liable due to a nondelegable duty. It was the intent of the parties that Moore indemnify Huber to the fullest extent permitted by law; however, Moore might not have been obligated to indemnify Huber for the sole negligence or willful misconduct where such indemnification is contrary to law. Otherwise, it was the intent of the parties that Moore indemnify Huber to the fullest extent permitted by law for such liability.
>
> In clear and unequivocal terms, the words of the indemnification clause as a whole both define negligence as an area of the clause's application and unquestionably and expressly address the subject of Moore's indemnification of Huber for Huber's own negligence. The single indemnification clause in this case provides for an expansive coverage of liability and then states an exception for indemnification for the sole negligence of Huber. Each part of the clause depends upon the other to give it meaning and to define its application. Each necessarily refers to the other.

Id. at 147.

In that the language of the indemnification provision before us essentially mirrors that in Moore, the result is the same. When the dependent clauses are read together, the provision

as a whole, in clear and unequivocal terms, expressly addresses the subject of Crane America's indemnification of Amsted for Amsted's own negligence. Thus, Crane America knowingly and willingly accepted its obligation to indemnify Amsted unless the injury was solely caused by the negligence of Amsted. We therefore conclude that the trial court erred in granting Crane America's motion for summary judgment and accordingly reverse. Furthermore, as we conclude that the indemnification provision is valid and enforceable, we also conclude the trial court erred in denying Amsted's motion for partial summary judgment.

Reversed and remanded for further proceedings.

FRIEDLANDER, J., and KIRSCH, J., concur.